THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.2025 of 1997

Dated :22-09-2005

Between:

P.Laxman.

.. **PETITIONER**

AND

Salar Jung Musuem Board. and others.

.. RESPONDENTS

-

-

-

-

-

-

-

-

-

-

-

ORDER:

Questioning the order of the second respondent, dated 31-01-1997, based on the resolution passed by the first respondent on 18-12-1996, to compulsorily retire the petitioner from service, under Regulation 13 of the Salar Jung Musuem Regulations read with FR 56(j), the present writ petition has been filed.

Facts, to the extent necessary for this writ petition, are that the petitioner joined service in Salar Jung Museum (hereinafter referred to as "the Museum") as an Assistant Photographer, pursuant to the office order, dated 17-07-1965. He was promoted as photographer in the year 1986. It is the case of the petitioner that one Sri Veerasharma, who was working under him as an Assistant Photographer, was not reliable and the petitioner had earlier requested the Director to shift the said Sri Veerasharma to another department. Accordingly, he was posted to Education Section. While so, on 30-09-1996, the petitioner is said to have fallen seriously ill and to have been admitted in the Hariprasad Memorial Hospital, Recobgunj, Hyderabad. He intimated officials of the Museum regarding his admission in the hospital which is a referral hospital for employees of the Museum. While the petitioner was undergoing treatment in the said hospital, he received memo dated 08-10-1996 calling upon him to handover the keys of his section to one Sri Bhaskar Rao immediately, to which, the petitioner sent a reply dated 09-10-1996 stating that there were many valuable equipments and negatives in the section and that he was sending the

keys of his table, in which, the keys of Almirah etc., were available. On coming to know that the keys were sought to be handed over to Sri Veerasharma, the petitioner is said to have addressed a letter stating that the keys may not be given to him, as the petitioner apprehended that he may put the Museum to loss. Despite his request, the keys were handed over to Sri Veerasharma, which resulted in the petitioner addressing letter to higher officials, including the Chairman of the Museum, about this issue. The petitioner was relieved from hospital on 28-11-1996 and reported to duty on 30-11-1996. Since the keys of his section were not handed over to him, the petitioner is said to have approached the second respondent personally, reported the matter and sought for the keys to be handed over to him. Since the Director did not take any action, the petitioner is said to have reported the matter to the Chairman of the Museum Board on 13-12-1996. The petitioner alleges malice against the second respondent. The petitioner contends that since he had sought that the keys be handed over back to him, the second and third respondents bore grudge against him and had connived to have the petitioner compulsorily retired from service. It is contended that the very exercise of power, both under Regulation 13 and under FR 56(j), is for extraneous reasons to take revenge on the petitioner and is, therefore vitiated in law. It is stated that the petitioner had rendered unblemished service, that he did not receive any memos, muchless charge memos, that he was never inflicted with punishment and the entire action culminating in his compulsorily retirement from service was solely on the ground that he had insisted that the keys of the section not be handed over to Sri Veerasharma. Allegations of malice are also made against the second respondent, (made party *eo nominee* as third respondent), to the effect that ever since he became the Director of the Museum, he had been troubling sincere and hard working employees, and giving shelter to such employees who helped him in his illegal activities. The petitioner contends that the entire

action, in compulsorily retiring him from service, was taken to cover up certain issues, which the petitioner sought to expose before the Expert Committee for physical verifications of Art and Objects, and since the committee was to carry out inspection on 05-02-1997, the second respondent wanted to avoid the presence of the petitioner, apprehending that he would be in trouble before the committee, and it was in such circumstances that the petitioner was compulsorily retired from service. Petitioner would contend that while the order of compulsorily retirement seems innocuous it is, in effect, founded on the aforesaid events and is in fact an order of punishment of termination from service. It is the case of the petitioner that the impugned order was passed without conducting any enquiry, and if, at all, the respondents intended to compulsorily retire the petitioner from service, they should have done so immediately on his completing the age of 55 years, and the very fact that he was permitted to continue in service thereafter till he reached the age of 56 years and that the said order was passed only after his request that Sri Veerasharma not be kept in charge of the section, establishes that the order was passed for extraneous reasons. The entire exercise of power is alleged to be malafide and a colourable exercise of power and not to be for genuine reasons. It is contended that no adverse remarks had been communicated to him and since the order was not preceded by any enquiry or a charge-sheet nor is it contended that he was a person of doubtful integrity, the order is vitiated on the grounds of violation of principles of natural justice, as being arbitrary and in violation of Articles 14 and 16 of the Constitution of India. Petitioner contends that the impugned order is malafide and was passed at the instance of the Director in view of the representations submitted by the petitioner against him to the Chairman of the Board.

A counter affidavit is filed on behalf of the respondents, wherein, it is stated

that the petitioner was compulsorily retired from service with effect from 31-01-1997 (AN) on payment of three months pay with allowances in lieu of three months notice pursuant to the resolution of the Board of the Museum dated 18-12-1996, wherein, the Board, after reviewing the functioning of the petitioner, considered it necessary and expedient to retire the petitioner, having regard to the efficient functioning of the Museum, and that the order passed was just, proper, valid and in accordance with law. While denying the various allegations including that of malice, it is stated that the petitioner was absent from duty without any intimation, while he was holding the responsible class-II post of photographer heading the section and it is only after he abstained from duty, did he send his leave application on 14-10-1996 seeking commuted leave without enclosing even a medical certificate in support thereof. The absence of the petitioner is said to have dislocated the work of the respondent Museum. Reference is also made to the letter addressed to the petitioner on 14-10-1996 to handover the keys of the section and that he was cautioned to be careful in his communications to his superiors, having regard to official decorum and discipline. It is further stated that the second respondent, by order dated 31-01-1997, had merely implemented the resolution of the Board, dated 18-12-1996, to compulsorily retire the petitioner and that the said order of compulsorily retirement was not as a measure of punishment. The petitioner was compulsorily retired with effect from 31-01-1997, on the basis of the resolution, dated 18-12-1996, with special reference to the records of the later period of his service. Since the order dated 31-01-1997, to compulsorily retire the petitioner, was not a punishment, principles of natural justice was not attracted. The allegations of malice, colourable exercise of power and that the petitioner was singled out for this purpose, are denied.

Sri M.Surendar Rao, learned counsel for the petitioner, would submit that the

decision to compulsorily retire an employee from service, under Regulation 13 of the Regulations of the Museum, could only be in "public interest". The resolution dated 18-12-1996, which is said to form the basis of the impugned order passed by the second respondent on 31-01-1997, was not even enclosed along with the said order nor does the impugned order disclose that the order of compulsorily retirement was passed in "public interest". The petitioner's endeavour, in highlighting various misdeeds of officials, was to protect the interest of the Museum and it is his action which was in public interest and not the order of compulsorily retirement passed by the respondents. Learned counsel would submit that un-communicated adverse remarks ought not to have been taken into consideration while passing the order of compulsorily retirement, that the action of the second respondent was tainted with malice, that it is not open to the respondents to take only a certain portion of the service records of the petitioner and while taking a decision, as to whether or not to retire an employee compulsorily in public interest, the entire service record is required to be taken into consideration. According to the learned counsel, a perusal of the counter affidavit would itself indicate the instances were those which took place just prior to the order of the compulsorily retirement being passed, which indicates that the entire service record of the petitioner had not been taken into consideration, while passing the impugned order of compulsorily retirement from service. Learned counsel would refer to ***GUR PRATAP SINGH*** v. ***STATE OF PUNJAB Smt.S.R.VENKATARAMAN v. UNION OF INDIA, BALDEV RAJ CHADHA v. UNION OF INDIA, THE STATE OF GUJARAT*** *v.* ***SURYAKANT CHUNILAL SHAH, RAJAT BARAN ROY*** *v* ***STATE OF WEST BENGAL, MADAN MOHAN CHOUDHARY*** *v* ***THE STATE OF BIHAR*** and ***SUKHDEO*** *v.* ***THE COMMISSIONER, AMRAVATI DIVISION, AMRAVATI,*** in this regard.

Sri R.S.Murthy, learned Central Government Standing Counsel, on the other hand, would contend though the order passed by the second respondent and the Resolution of the first respondent do not contain the words “in public interest”, the fact, however, remains that the order was, indeed, passed in public interest, and that the impugned order dated 31-01-1997 refers to Regulation 13 of the Museum Regulations, which indicates that the order of compulsorily retirement was passed “in public interest”. Learned Standing Counsel would submit that the order passed, in the interest of the Museum, would certainly be an order passed in public interest. Since the order does not cast a stigma and is not as a measure of punishment, the question, of compliance with principles of natural justice or giving a charge-sheet to the petitioner or conducting an enquiry in this regard, does not arise. Learned Standing Counsel would place reliance on ***SRI BAIKUNTHA NATH DAS*** *v* ***CHIEF DISTRICT MEDICAL OFFICER, BARIPADA*** in this regard.

Before examining the rival contentions, it is necessary to refer to the provisions of Salar Jung Museum Act (Act 26 of 61). Section 4 thereof, relates to establishment and incorporation of the Board and sub-section 2 provides that the Board shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of the Act, to acquire, hold and dispose of property and to contract, and to sue and be sued. The Board of the Museum is a statutory body under the Act and is composed of the members specified in Section 5. The ex-officio Chairman of the Board is the Governor of Andhra Pradesh; the Secretary to the Government of India in the Ministry concerned with matters relating to the Museum; the Mayor of the Corporation of Hyderabad; the Vice-Chancellor of the Osmania University; the Accountant-

General, Andhra Pradesh; a person to be nominated by the Central Government, who shall be a member of the family of the late Nawab Salar Jung Bahadur; three persons to be nominated by the Central Government who shall as far as possible be persons having knowledge of, and experience in, matters relating to the administration of museums and libraries and two persons to be nominated by the State Government are the other members of the Board. Section 28 of Act 26 of 1961 confers powers on the Board, with the previous approval of the Central Government, by notification in the Official Gazette, to make regulations. The Salar Jung Museum Regulations, made in exercise of the powers conferred on the Board under Section 28 of Act 26 of 1961, are therefore, statutory in nature.

Regulation 13 of the Salar Jung Museum Regulations relates to retirement and reads as under:

> "……. The age of retirement of the employees of the Board shall be @ 58 years except for the class IV employees who shall retire at the age of 60 years.
>
> Provided that there the Board is of the opinion that the employee is specifically qualified and it is in the interest of the museum to extend his services it may, for reasons to be recorded in writing, extend the services of such employee, by one year at a time for total period of two years. Where it appears necessary so to do, in the interest of the museum the Board may, with the previous approval of the Central Government, extend the services of an employee for such further period as it may deem necessary beyond the period of two years.
>
> Provided further that the Board may require an employee to retire after he attains the age of 55 years on three months' notice without assigning any reason; the employee also may, after attaining the age of 55 years, voluntarily retire after giving three months notice to the Board.
>
> Provided also that the terms and conditions of service of

any person shall not be altered to his disadvantage without the previous approval of the Central Government."

Reference, in this connection, may also be made to FR 56(j), which reads thus:

(j) Notwithstanding, anything contained in this rule, the appropriate authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice;

i. If he is, in Group 'A' or Group 'B' service or post in a substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years.

ii. In any other case after he has attained the age of fifty-five years:

Provided that nothing in this clause shall apply to a Government servant referred to in clause (e), who entered Government Service on or before the 23rd July, 1966.

(jj)(i) If on a review of the case either on a representation from the Government servant retired prematurely or otherwise, it is decided to reinstate the Government servant in service, the authority ordering reinstatement may regulate the intervening period between the date of premature retirement and the date of reinstatement by the grant of leave of the kind due and admissible, including extraordinary leave, or by treating it as *dies non* depending upon the facts and circumstances of the case:

Provided that that the intervening period shall be treated as a period spent on duty for all purposes including pay and allowances, if it is specifically held by the authority ordering reinstatement that the premature retirement was itself not justified in the circumstances of the case, or, if the order of premature retirement is set aside by a Court of Law.

(ii) Where the order of premature retirement is set aside by a Court of Law with specific directions in regard to

> regulation of the period between the date of premature retirement and the date of reinstatement and no further appeal is proposed to be filed, the aforesaid period shall be regulated in accordance with the directions of the court."

Sri R.S.Murthy, learned Central Standing Counsel, placed before me the entire service record of the petitioner. On a perusal thereof, I am not inclined to take any view contrary to the decision which was taken by the respondents.

From the records placed, before this court by the learned Central Government Standing Counsel, it is seen that pursuant to a note put up by the Secretary of the Museum regarding the irregular functioning and absence from duty of the petitioner herein, the executive committee approved that the petitioner be retired from service, which recommendation was accepted by the Board of the Museum on 18-12-1996. The action of the Executive Board was noted by the Board in its meeting held on 18-12-1996. The impugned order, dated 31-01-1997, was passed by the Secretary of the Museum, under Regulation 13 of Salar Jung Museum Regulations read with FR 56(j), pursuant to the resolution of the Board dated 18-12-1996. Consequent to the office order dated 31-01-1997, the petitioner was retired from service with effect from 31-01-1997 on payment of three months salary in lieu of notice and his name was struck off from the rolls of the Museum. A detailed note, put up by the Secretary, which was approved by the Museum Board, refers to the fact that the petitioner was in the habit of avoiding the allotted work and habituated to sending petitions against his superior officers and that he did not keep good relations with his subordinates, that he caused serious dislocation of work in the section, that the Assistant Photographers were not given proper work and that the subordinate

staff complained of his indecent behaviour. Reference is also made to the fact that the petitioner was often impressed to streamline the sectional work and assign work to the staff of the section, that for the past three years there was no improvement, that several warnings were issued to him vide letters, dated 20-08-1994, 10-06-1995, 29-10-1995 and 30-04-1996 and that the petitioner was in the habit of proceeding on leave without prior sanction and inspite of being a Sectional Head, making no arrangements to handover keys of the Section, resulting in sectional work often coming to a stand still. Instances of his absenteeism, without prior written application and without handing over of the section, are referred to in the said note. The petitioner is said to be in the habit of writing unwarranted remarks against his subordinates in their leave applications, that in recent months he continued to abuse his superiors and sectional heads and was engaged in making false allegations in writing to the Chairman, SJM Board, Members and higher officials of the Ministry. The note also refers to the fact that the petitioner had tampered with sectional registers recording adverse and baseless remarks against his subordinate staff in the section, that he addressed representations to the Chairman of the Board, (The Governor of Andhra Pradesh), on 10-10-1996, 14-10-1996, 23-10-1996 and 05-11-1996, that during his long service from 1986, the petitioner had not even prepared a register of negatives and had failed to upkeep negatives, leaving this basic work of upkeep and maintenance of negatives to the subordinates, Adhoc G.A./Attender etc., and despite his being asked, by the Director on 12-09-1993, to verify and enter in the register, and despite several reminders, the registering work of the photo-negatives (nearly 72,000/-) of the Museum objects remained incomplete for the past three years and the petitioner was avoiding this work on some pretext or other. The note refers to the petitioner's indecent behaviour against his superiors as well as subordinates in the section as mainly aimed to avoid work, that photo-documentation and proper upkeep of

negatives was a prime job, required to be systematic in keeping in mind the best interests and future of the Museum and unless, the petitioner was prematurely retired, the section could not be put back on rails. The note also refers to the fact that the work of the section is of urgent nature as computerization of objects had to be initiated with photo-index cards.

On the principles governing compulsorily retirement from service under FR 56(j), the Supreme Court in ***BAIKUNTHA NATH DAS*** (8 supra), held :

> "..... The following principles emerge from the above discussion:
>
> (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
>
> (ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.
>
> (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the high Court or this Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.
>
> (iv) The Government (or the Review committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/ character rolls, both favourable and adverse. If a government servant is promoted to a higher post

> notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.
>
> (v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.
>
> Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 29 to 31 above.

It is clear therefrom that an order, of compulsorily retirement, could be passed only if an opinion was formed that it was in the public interest to retire an employee compulsorily, that while the satisfaction required in this regard is subjective, it must be based on relevant material and not malafide. The scope of judicial scrutiny, in such matters, has been held, to be limited, that the order passed was not malafide, it was an order which was not based on no evidence, that it was not arbitrary or that no reasonable person would have formed such an opinion on the given material. It has also been held that the Reviewing Committee has to consider the entire record of service, before taking a decision in the matter, attaching more importance to the record of and performance during the later years and that the said record would naturally include entries in the confidential reports/character rolls, both favourable and adverse.

Learned Central Government Standing Counsel would submit that the entire record was considered by the respondents and the instances referred, would also reflect the importance attached to the record of service and the performance of the petitioner during the later part of his service.

On the facts as noted above, the question which arises for consideration is as to whether action taken by the respondents to compulsorily retire the petitioner compulsorily under Regulation 13 of the Museum Regulations read with FR 56(j), could be said to be an order made in "public interest". It is no doubt true that the order does not specifically refer to its being passed in public interest, the impugned order dated 31-01-1997 however refers to FR 56(j) and to Regulation 13, whereunder an order of compulsorily retirement can only be passed in public interest. From the details extracted above, which, along with the service record of the petitioner, formed the basis for arriving at a decision to compulsorily retire the petitioner from service, it cannot be said that the action taken by the respondents was not in public interest. As held by the Supreme Court in ***BAIKUNTHA NATH DAS*** (8 supra), this court would not sit as an appellate court over the decision of the respondents in this regard, more so as it is not an order based on no evidence nor can it be said that, on the material as disclosed in the service record and the recent service record of the petitioner as detailed supra, no reasonable person would form the requisite opinion that the petitioner should not be compulsorily retire from service.

Before dealing with the contention of malafides, it is necessary to refer to the judgments relied on by Sri M.Surender Rao, learned counsel for the petitioner.

I n ***GURPRATAP SINGH*** (1 supra), wherein a similar provision under Rule 5.32(b) of the Punjab Service Rules had come up for consideration, the Supreme Court held that although Rule 5.32 (b) expressly states that the right thereunder shall not be exercised except when it is in the public interest to

dispense with the further services of the Government employee, it was clear that all public power whether it be under Rule 5.32(b) or (c) or under any other provision had to be exercised not for the private purposes of higher official or even a Minister and it had to be and should be exercised only for furtherance of public interest. The Apex Court held that the private appetite of the repository of a public power can never be satisfied without the order being castigated.

Learned counsel for the petitioner would refer to the judgment of the Supreme Court in ***GURPRATAP SINGH*** case (1 supra) and contend that the impugned order, since it does not specifically refer to the fact that it is passed in public interest, would be an order passed for extraneous reasons and therefore, it is liable to be set aside. I am afraid, I cannot agree. The impugned order dated 31-01-1997 clearly shows that the action taken, to compulsorily retire the petitioner from service, was in public interest. From the facts narrated above, it cannot be said otherwise, nor can it be said that the action taken by the respondents was based on no evidence or is perverse.

In ***BALDEV RAJ CHADHA*** (2 supra), the Supreme Court held :

> "….. This takes us to the meat of the matter. viz., whether the appellant was retired because and only because it was necessary in the public interest so to do. It is an affirmative action, not a negative disposition a positive conclusion, not a neutral attitude. It is a terminal step to justify which the onus is on the Administration, not a matter where the victim must make out the contrary. Security of tenure is the condition of efficiency of service. The Administration, to be competent must have servants who are not plagued by uncertainty about tomorrow. At the age of 50 when you have family responsibility and the sombre problems of one's own life's evening, your experience, accomplishments and fullness of fitness become an asset to the Administration, if and only if you are not harried or worried by 'what will happen to me and my family?' 'Where will I go if cashiered ?' 'How will I survive when I am too old to be newly employed and too

young to be superannuated ?' These considerations become all the more important in departments where functional independence. fearless scrutiny, and freedom to expose evil or error in high places is the task. And the Ombudsmanic tasks of the office of audit vested in the C. and AG. and the entire army of monitors and minions under him are too strategic for the nation's financial health and discipline that immunity from subtle threats and oblique over-aweing is very much in public interest. So it is that we must emphatically state that under the guise of 'public interest' if unlimited discretion is regarded acceptable for making an order of premature retirement, it will be the surest menace to public interest and must fail for unreasonableness, arbitrariness and disguised dismissal. To constitutionalise the rule, we must so read it as to free it from the potential for the mischiefs we have just projected. The exercise of power must be bona fide and promote public interest. There is no demonstrable ground to infer mala fides here and the only infirmity alleged which deserves serious notice is as to whether the order has been made in public interest. When an order is challenged and its validity depends on its being supported by public interest the State must disclose the material so that the court may be satisfied that the order is not bad for want of any material whatever which to a reasonable man reasonably instructed in the law, is sufficient to sustain the grounds of 'public interest' justifying forced retirement of the public servant. Judges cannot substitute their judgment for that of the Administrator but they are not absolved from the minimal review well-settled in administrative law and founded on constitutional obligations. The limitations on judicial power in this area are well known and we are confined to an examination of the material merely to see whether a rational mind may conceivably be satisfied that the compulsory retirement of the officer concerned is necessary in public interest.

We will consider this question to the extent disclosed by the record and in the light of the submissions made by both the parties. The whole purpose of the rule is to weed out the worthless without the punitive extremes covered by Art. 311 of the Constitution. After all, administration, to be efficient, must not be manned by drones, do-nothings, incompetents and unworthiness. They may not be delinquent who must be punished but may be a burden on the Administration if

> by insensitive, insouciant, unintelligent or dubious conduct impede the flow or promote stagnation, in a country where speed, sensitivity, probity, and non-irritative public relations and enthusiastic creativity are urgently needed but paper logged processes and callous cadres are the besetting sin of the Administration. It is in public interest to retire a never-do-well, but to juggle with confidential reports when a man's career is at stake is a confidence trick contrary to public interest. Moreover, confidential reports are often subjective, impressionistic and must receive sedulous checking as basis for decision making. The appropriate authority, not the court, makes the decision, but, even so, a caveat is necessary to avoid misuse.

It is clear that the limitations imposed on the powers of the High Court to scrutinize, such matters, is confined to an examination of the material merely to see whether a rational mind may conceivably be satisfied that the compulsorily retirement of the officer was necessary in public interest. The facts, as stated in the agenda note of the Secretary, would reveal that the petitioner was not only abstaining from duty, but also abusing his superiors. He failed to discharge the duties assigned to him including the specific work of maintaining a register of photo-negatives of the Museum and was in the habit of addressing letters casting aspersions against his superiors. In such a fact situation, no reasonable man could hold that it is not in public interest to retire such a person from service. It is also relevant to note that the judgment of the Supreme Court in ***BALDEV RAJ CHADHA*** (3 supra) was taken note of in the subsequent judgment in ***BAIKUNTHANATH DAS*** (8 supra).

In ***SUKHDEO*** (7 supra), the Supreme Court, after examining the records, to verify as to whether the order of compulsory retirement passed against the employee in that case was in public interest, held that when the Government

resorts to compulsorily retire a Government servant, the entire record of service, particularly, in the last period of service is required to be closely scrutinized and whether the power was reasonably exercised, should be examined The counter-affidavit (para 7) specifically refers to the fact that the petitioner's service was reviewed according to the rules in the interest of the Museum. It is also stated that the Board had reviewed the functioning of the petitioner and felt it necessary and expedient to retire him having regard to the efficient functioning of the Museum (para 4). It is, thus, clear that the entire service record of the petitioner was reviewed before a decision was taken to compulsorily retire him from service.

In ***SURYAKANT*** (4 supra), this principle was reiterated by the Supreme Court and it was held thus:

> "…… The Court, however, added that the opinion must be based on the material on record otherwise it would amount to arbitrary or colourable exercise of power. It was also held that the decision to compulsorily retire an employee can, therefore, be challenged on the ground that requisite opinion was based on evidence or had not been formed or the decision was based on collateral grounds or that it was an arbitrary decision.
>
> In order, therefore, to find out whether any Government servant has outlived his utility and is to be compulsorily retired in public interest for maintaining an efficient administration, an objective view of overall performance of that Government servant has to be taken before deciding, after he has attained the age of 50 years, either to retain him further in service or to dispense with his services in public interest, by giving him three months' notice or pay in lieu thereof."

The Apex Court reiterated that the opinion formed to compulsorily retire an employee must be based on the material on record, not on collateral grounds and the decision to dispense with the services must be in public interest. As stated above, the entire service record of the petitioner was considered by the respondents and since the decision to compulsorily retire the petitioner from service was taken in the best interests of the museum, it was undoubtedly, in public interest. The action of the respondents in this regard cannot be said to be illegal or contrary to law.

In ***MADAN MOHAN*** (6 supra), the Supreme Court, after referring to the judgment in ***BAIKUNTHANATH DAS*** (8 supra), held that adverse remarks, if recorded in an employee's character roll in the "normal course" ought to be communicated to him and if any representation is made against those remarks the said representation should be disposed of in the "normal course" but with promptitude and that pendency of representation against the adverse remarks or non-disposal of the representation would, however, not prevent action being taken for compulsorily retirement of the employee even on the basis of that entry either under F.R. 56(j) or any provision equivalent thereto.

The agenda note refers to several letters said to have been addressed to the petitioner. It is not the petitioner's case that he had submitted his objections thereto, which had not been considered by the respondents or that un-communicated adverse remarks were taken into consideration by the respondents before the order of compulsorily retirement was passed.

In ***RAJAT BARAN ROY*** (5 supra), the Supreme Court held that Rule 75(2)(a)(a) of the West Bengal Services Rules Part-I, which is similar to FR 56(j), could only be invoked for the purpose of retiring a Government servant in

"public interest" and that a careful perusal of the impugned order nowhere showed that the said order was being issued in "public interest" which was a condition precedent for invoking the rule. The order of compulsorily retirement in the said case was not referred to in the order of the Supreme Court. The fact, however, remains that in the impugned order dated 31-01-1997 there is a specific reference, to FR 56(j) and Regulation 13 of the Salar Jung Museum Regulations, which empowers the authorities to retire an employee compulsorily only in "public interest". I find considerable force in the submission of Sri R.S.Murthy, learned Central Government Standing Counsel that the very reference to these statutory provisions would indicate that the impugned order has, undoubtedly, been passed in public interest and failure to specifically mention the words "in public interest" is of no consequence.

Before examining the question of malice, one other contention urged by the learned counsel for the petitioner is required to be considered.

Sri M.Surender Rao, learned counsel for the petitioner, would submit that while the representations submitted by the petitioner, against the illegal acts of his superiors, was in the interest of the Museum and in public interest, the action of the respondents, in compulsorily retiring him from service, was not. As held by the Supreme Court in ***M.H.DEVENDRAPPA v. KARNATAKA STATE SMALL INDUSTRIES DEVELOPMENT CORPORATION***, every employee of an organization is required to maintain discipline, is not entitled to make repeated complaints against his superiors in the guise of espousing public interest, such conduct was clearly detrimental to the proper functioning of the Organisation or its internal discipline and such acts amounted to lowering the prestige of the organization in which he worked. If, indeed, the petitoner wished to do so, it was always open to him to leave the organization and espouse public interest causes. As long as he remained in service, the

petitioner was, however, bound by the service regulations and was not entitled to cast aspersions or make wild allegations against his superiors.

The only question, which remains for consideration, is one of malice. It is true that the petitioner, while alleging malice against the second respondent, has made him a party to the writ petition *eo-nominee,* as the third respondent. Sri M.Surender Rao, learned counsel for the petitioner would place reliance on ***VENKATARAMAN*** (2 supra), wherein the Supreme Court held thus:

> "…… We have made a mention of the plea of malice which the appellant had taken in her writ petition. Although she made an allegation of malice against V.D.Vyas under whom she served for a very short period and got an adverse report, there is nothing on the record to show that vyas was able to influence the Central Government in making the order of premature retirement dated March, 26, 1976. It is not therefore, the case of the appellant that there was actual malicious intention on the part of the Government in making the alleged wrongful order of her premature retirement so as to amount to malaice in fact. Malice in law is, however, quite different. Viscount Haldans described it as follows in Shearer and another V. Shields(1):
>
> "A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of his mind is concerned, he acts ignorantly, and in that sense innocently."
>
> Thus malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause.
>
> It is, however, not necessary to examine the question of malice in law in this case, for it is trite law that if a

discretionary power has been exercised for an unauthorized purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith, As was stated by Lord Goddard C.J., in Pilling V Abergale Urban District Council (2), where a duty to determine a question is conferred on an authority which state their reasons for the decision, “and the reasons which they state show that they have taken into account matters which they ought not to have taken into account, or that they have failed to take matters into account which they ought to have taken into account, the court to which an appeal lies can and ought to adjudicate on the matter.”

The principle which is applicable in such cases has thus been stated by Lord Esher M.R. in The Queen on the prosecution of Richard Westbrook V The vestry of St.Pancras(3):

“If people who have to exercise a public duty by exercising their discretion take into account matter which the Courts consider not to be proper for the guidance of their discretion, than in the eye of the law they have not exercised their discretion.”

This view has been followed in Sadler V. Sheffield Corporation (4).

We are in agreement with this view. It is equally true that there will be an error of fact when a public body is promoted by a mistaken belief in the existence of a non existing fact or circumstances. This is so clearly unreasonable that what is done under such a mistaken belief might almost be said to have been done in bad faith; and in actual experience, and as things go, these may well be said to run into one another.

The influence of extraneous matters will be undoubted where the authority making the order has admitted their influence. It will, therefore, be a gross abuse of legal power to punish a person or destroy her service career in a matter not warranted by law by putting a rule which makes a useful provision for the prematures retirement of

> government servants only in the 'public interest', to a purpose wholly unwarranted by it, and to arrive at quite a contradictory result. An administrative order which is based on reasons of fact which do not exist must therefore, be held to be infected with an abuse of power."

From the facts narrated in the preceding paragraphs, it cannot be said that the decision to compulsorily retire the petitioner from service was for extraneous reasons, or that it was based on no material. It cannot also be said that no reasonable man would have thought, otherwise. While it is easy to allege malice, the degree of proof required to establish malafides is of a very high order of credibility as held by the Supreme Court in ***E.P.ROYAPPA*** v. ***STATE OF TAMILNADU.***

The Supreme Court in ***E.P.ROYAPPA*** (10 supra) held thus:

> "Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility……"

Except for a bald allegation in the affidavit, the petitioner has not been able to establish malafides of the second respondent. In any event, the order to compulsorily retire the petitioner from service is based on the Resolution of the Board which include the Governor of Andhra Pradesh, the Accountant General, Senior Officials of the Union and State Governments etc. It is very difficult to conceive that the second respondent could influence such high dignitaries in coming to the conclusion that it was in public interest to compulsorily retire the

petitioner from service. The allegation of malafides also fails.

I do not see any merit in the writ petition and it is accordingly dismissed. There shall be no order as to costs.

_____

RAMESH RANGANATHAN, J

Dated: 22-09-2005

Prv